negligent defendant may also be estopped as against the named payee who has purchased innocently.

There is clearly a sharp distinction between such cases as *Foster* v. *Mackinnon* and *Lewis* v. *Clay*, and the cases where the defendant has really intended to enter into the contractual obligation represented by the negotiable instrument upon which he has placed his name. In the latter cases, the defendant has actually made the note in question, and, though he has been induced to sign his name by fraud or duress, he is neverthe less liable to a purchaser for value without notice.

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THE PAYEE AS A HOLDER IN DUE COURSE. — The case of *Lewis* v. *Clay* discussed in the preceding note, is also of interest because of Lord Russell's *dictum* that the plaintiff as named payee was an immediate party, and could not, therefore, be regarded as a holder in due course, though he paid value and took without notice.

Lord Russell, in support of this view, relies chiefly upon the Bills of Exchange Act. It would seem, however, that by a proper interpretation of that statute, such a payee as the plaintiff in the case under consideration should be regarded as much a holder in due course as a subsequent transferee; and, apart from the statute, Lord Russell's position is clearly inconsistent with the overwhelming weight of authority both in England and the United States. See, among other cases, *Masters* v. *Ibberson*, 8 C. B. 100; *Watson* v. *Russell*, 31 L. J. Q. B. 304; *Fairbanks* v. *Snow*, 145 Mass. 153; *Lucas* v. *Owens*, 113 Ind. 521, and cases cited. Apparently the courts of only one jurisdiction hold the contrary opinion. See *Camp* v. *Sturdevant*, 16 Neb. 693. Moreover, it is conceived that on strict legal principle the *dictum* cannot be supported. The payee, in such a case as *Lewis* v. *Clay*, purchases the legal title to an instrument, complete and regular on its face, for a valuable consideration and without notice of fraud, duress, or lack of consideration. Under such circumstances, to subject the plaintiff to all the defences that might be raised against an immediate party privy to the whole transaction, would not only work injustice, but would be contrary to well-established principles of law as to the nature of purchase for value without notice.

The provisions of the English Bills of Exchange Act in regard to a holder in due course have been incorporated into the Negotiable Instruments Law, which has been already enacted in several of our States, and American lawyers, therefore, will be especially interested in watching the influence of Lord Russell's position upon future decisions. It is not believed that either the English or the American courts will change their present opinion.

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RECAPTION OF A RAILROAD SEAT. — An interesting and unique case in railroad law was recently decided in one of the English lower courts (see Albany Law Journal, Jan. 8, 1898). A gentleman travelling in a train temporarily left his carriage at one of the stations, and took the usual precaution to reserve his seat by leaving therein his umbrella and newspapers. While absent, another passenger seized his seat, and refused to give it up until forcibly ejected by the former occupant. The ejected passenger brought an action for damages against the original holder of the seat. The action was dismissed, and a counter-claim for similar damages sustained. The court said that this universal mode of

reserving a seat was justifiable and convenient, and that reasonable force may be used to eject an intruder. It has not been possible to obtain a full report of the case, so that the legal grounds upon which the court proceeded must remain a matter of conjecture. Certainly it is difficult to find any interest or property in the holder of a seat upon which to base his right of recaption. It may be suggested, however, that a passenger in a train has been given the custody of his seat by the railroad company. He is entitled by his contract of carriage to some seat, and although the company could compel him to change it, still, as against all others, the law should permit him to maintain the custody of a seat he has rightfully taken, and to eject any one that usurps it. The servant to whom a master intrusts a horse, has not possession of it, yet surely he could lawfully recapture the horse from a thief. A lodger cannot be said to have possession of the meal placed before him, yet who would deny him the right to retake from his grasping neighbor his knife and fork, or his turkey? And even assuming that the holder of a reserved seat in a theatre has no right of property, who can doubt that he would have a right to eject an intruder? There is little or no decided authority for such a view, but it is submitted that the case is an example of a right so universally recognized by the good sense of the public, that it has not hitherto come up in a court of law.

The decision that reasonable force may be used in retaking the seat appears, perhaps, inexpedient as tending to produce breaches of the peace (see N. Y. L. J., Jan. 19, 1898); yet in ordinary cases of recaption the law permits the use of reasonable force, short of wounding or the use of dangerous weapons, in regaining momentarily interrupted possession. *Commonwealth* v. *Donahue,* 148 Mass. 529.

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GREAT ENGLISH JUDGES. — COMMON PLEAS. — This last of a series of notes the object of which has been to individualize, in the slight degree that is possible in such narrow limits, certain names familiar to those acquainted with the English Reports, does not find in the Court of Common Pleas so rich a field for selection as in the Chancellorship, the King's Bench, or the Exchequer. Coke, and Sir Matthew Hale, to be sure, sat in the Common Pleas, but during a more modern period this court has fewer great names in the list of its judges than the others.

From 1829 to 1846 the Chief Justice of the Common Pleas was Sir Nicolas Conyngham Tindal. He was born at Chelmsford in 1776; educated at Trinity College, Cambridge, where, after a highly creditable career, he was made a fellow of his college; studied law at Lincoln's Inn, and first took up the practice of special pleading. In this branch of law he became very proficient, and attracted so considerable a business that in 1809 he was able to be called to the bar, and to give up his fellowship by marrying. At the bar he soon had plenty of employment. Many pupils, too, resorted to his chambers, among them two young men who later became known in the legal world as Lord Brougham, and Baron Parke. As a lawyer Tindal was distinguished rather for the logical skill with which he argued, due no doubt to his study of special pleading, than for any natural eloquence or rhetorical force. Perhaps the two most interesting events of his career at the bar were his share in the defence of Queen Caroline, and his conduct of the appellee's case in *Ashford* v. *Thornton,* 1 Barn. & Ald. 405. In that case, which was an appeal of